IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25/09/2002

Coram

The Honourable Mr. Justice P. THANGAVEL

Civil Revision Petition No.795 of 1999

Joshi & Co.,
represented by power agent
L. Rajendran,
173, Thambu Chetty Street,
Chennai-1. ... Petitioner.

-Vs-

M/s. UCO Bank,
Main Branch,
represented by General Manager,
169, Thambu Chetty Street,
Chennai-1. ... Respondent.

This Civil Revision Petition is preferred under section 115 of Civil Procedure Code against the order and decretal order dated 4.1.1999 in E.P.No.3038 of 1997 in O.S.No.2603 of 1981 dated 4.1.1999 on the file of X Assistant Judge, City Civil Court, Madras.

!For Petitioner : Mr. Sandeep Shah
for M/s. Shah & Shah

^For respondent : Ms. Uma Venkataraman.

:O R D E R

This Civil Revision Petition has been filed by the second defendant/judgment debtor as revision petitioner against the order and decretal order dated 4.1.1999 and made in E.P.No.3038 of 1997 in O.S.No.2603 of 1981 on the file of the learned X Assistant Judge, City Civil Court, Madras.

2. The facts that are necessary for disposal of this Civil Revision Petition are as follows:- The Plaintiff/decree-holder, the respondent herein, is UCO Bank, Main Branch at 169, Thambu Chetty Street, Chennai-1. The revision petitioner and two others received a sum of Rs.25,000/- on 21.9.1973

and executed a deed of hypothecation as well as a promissory note on 21.9.1973 as security in favour of the respondent herein agreeing to repay the said sum with interest at 15% per annum. The revision petitioner and two others/defendants submitted to a decree on 5.1.1983 and the suit was decreed for a sum of Rs.52,781-6 9 together with interest at 15% per annum from 1.11.1978 till realization and also with cost of Rs.4,395-75. As per the decree, the defendants were permitted to pay the decree amount in monthly instalment of Rs.3,000/- commencing from 15.2.1983 and in default of payment of any one of the instalments, the entire amount then due shall become payable forthwith. There is also a condition stipulated in the decree that in default of such payment, the respondent herein be at liberty to apply to the Court for sale of the hypothecated goods and adjust the net sale proceeds towards the decree amount after defraying the expenses of the sale. For realising the balance, if any, after adjustment of sale proceeds, liberty was given to the plaintiff to recover the said amount with interest at 15% per annum. As per the decree dated 5.1.1983, the first payment of Rs.3,000/- was made admittedly on 15.2.1983. The above said payment is on the next month of the passing of the decree. It is also admitted that the subsequent payments of Rs.25,000/-, Rs.500/-, Rs.2,000/- and Rs.500/- were made on 5.7.1984, 15.4.1986, 13.3.1986 and 12.8.1986 respectively. After giving credit to the payment of Rs.31,000/-, the present Execution Petition has been filed by the respondent herein on 16.10.1996 for recovery of a sum of Rs.1,31,645-65 due to the respondent herein from the revision petitioner and two others.

3. The revision petitioner resisted the execution petition on the sole ground that this Execution Petition is barred by limitation and therefore, this Execution Petition should be dismissed.

4. After considering the submissions made on both sides, the Execution Court has come to the conclusion that the filing of the Execution Petition in E.P.No.3038 of 1997 in O.S.No.2603 of 1981 is not barred by limitation and therefore, the Execution Petition is maintainable. Aggrieved at the order and decretal order passed by the Execution Court, one of the judgment-debtors as revision petitioner has come forward with this Civil Revision Petition.

5. The only point that urged before this Court for consideration is whether the Execution Petition filed in E.P.No.3038 of 1997 in O.S. No.2603 of 1981 is barred by limitation or not?

6. As already pointed out, the respondent herein, as plaintiff filed the suit against the revision petitioner and two others for recovery of a sum of Rs.25,000/- with interest at 15% per annum on the strength of a deed of hypothecation and promissory note dated 21.9.1973 executed by the revision petitioner and two others in favour of the respondent herein. On submitting to a decree by the revision petitioner and two others as defendants before the Execution Court, a decree was passed on 5.1.1983. The revision petitioner and two others were permitted to pay the decree amount in monthly instalment of Rs.3,000/- commencing from 15.2.1983 and in default of payment of any one of the instalments, the entire amount then due shall become payable forthwith. Liberty is given to the respondent herein to bring hypothecated goods for sale

and to adjust the sale proceeds towards the decree amount after defraying the expenses of the sale.

7. In this case, even though the revision petitioner and two others have made first payment of Rs.3,000/- on 15.2.1983, they have not chosen to pay the second instalment of payment in the month of March, 1983. It is because of the default committed by the revision petitioner and two others, the respondent herein armed with clause embodied in the decree, filed the Execution Petition in E.P.No.998 of 1984 for recovery of the entire amount due as per the decree. It will show that the respondent herein has exercised the option of executing the decree for recovery of entire amount due because of the default committed by the revision petitioner and two others in payment of monthly instalments. It is evident from the copy of the Execution Petition, the revision petitioner and two others had made payment of Rs.25,000/- in lump sum on 7.7.1984 and after receip t of the said amount, the respondent herein has not pressed the Execution Petition filed in E.P.No.998 of 1984 on 7.7.1984. In the circumstances stated supra, the question of continuing the instalment payment will not arise in this proceeding.

8. If the respondent herein is interested, the respondent herein is at liberty to proceed against the hypothecated goods to bring the same to sale and to adjust the sale proceeds towards the balance decree amount. If there is any balance after adjustment of the sale proceeds, liberty is always there for the respondent herein to collect the balance with interest at 15% per annum, but subject to limitation.

9. As per Article 182 of the Limitation Act, 1908, the period of limitation is prescribed as three years for execution of a decree or order of any Civil Court not provided for by Article 183 or by section 48 of the Code of Civil Procedure, 1908 and six years where a certified copy of the decree or order has been registered. As per section 19 of the Limitation Act, 1908, where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Explanation (III) to section 19 of the Limitation Act, 1908 would further reveal that for the purpose of this section, an application for the execution of a decree or order is an application in respect of right. It is therefore evident from the combined reading of Article 182 and section 19 of the Limitation Act, 1908 that a petition for execution of a decree or order of any Civil Court can be executed within a period of three years, if the certified copy of decree is not registered and the said decree can be executed within a period of six years, if the certified copy of that decree is registered.

10. Certain amendments were made in the Limitation Act, 1908 and new Limitation Act was enacted in 1963. The assent of the President had been obtained on 5.10.1963 and published in the extraordinary gazette of India on 5.10.1963 itself to enforce the new Limitation Act, 1963. Section 18(1) of the Limitation Act, 1963 would reveal that where, before the expiration of the

prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Section 18(1) of the Limitation Act, 1963 reproduces section 19(1) of the Limitation Act, 1908. But the Explanation (c) to section 18 of the Limitation Act, 1963 would reveal that an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right. The right conferred under section 19(1) of the Limitation Act, 1908, with regard to acknowledgment of liability in an application for execution of decree, has been completely taken away under the Limitation Act, 1963. Therefore, in executing a decree passed by the competent Civil Court, acknowledgment of liability by payment after passing of the decree cannot be taken into consideration. But the date of passing of the decree alone has to be taken into consideration for the purpose of calculating the period of limitation.

11. Article 136 of the Limitation Act, 1963 provides that for execution of any decree other than a decree granting a mandatory injunction or order of any civil Court, the period of limitation is 12 years from the date of decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment of delivery in respect of which execution is sought, takes place. In the proviso, it is also stated that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. It is evident from the proviso that exemption is granted only with regard to perpetual injunction under the provisions of the Limitation Act, 1963. But under the Limitation Act, 1963, the period of limitation for execution of any decree other than decree for mandatory injunction has been fixed at 12 years.

12. In this case, as already pointed out the decree was passed by the competent Civil Court on 5.1.1983, but with permission to the revision petitioner and two others to make instalment payment of Rs.3,000 /- and in default of any payment of instalment, the entire amount becomes payable forthwith. As already pointed out, by filing a petition in E.P.No.998 of 1984, the respondent herein had opted to recover entire amount as per the clause contained in the decree. It is also relevant to point out that there is no subsequent order by the competent Court modifying the mode of payment already ordered on 5.1.1983. A conjoint reading of section 18 and Article 136 of the Limitation Act, 1963 would reveal that any payment made by the judgment-debtor or judgment-debtors to the decree-holder subsequent to the passing of the decree, except as per the direction of the Court, cannot be treated as acknowledgment of liability of payment extending the period of limitation and the execution petition has to be filed for realization of the fruits of the decree only within a period of twelve years from the date of passing of decree.

13. The above conclusion finds support from section 3 of the

Limitation Act, 1963 wherein it is stated that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. This view also finds support from the decision of this High Court reported in Duraisami and another – vs. - Rasayammal (dead) and others, 19 96(1) C.C.C. 579 (Madras), wherein it was held that filing an execution petition beyond the period of twelve years from the date of decree is barred by limitation.

14. In view of the foregoing reasons, this Court is unable to agree with the conclusion arrived at by the Execution Court that the Execution Petition filed on 16.10.1996 for the decree passed on 5.1.1983 is not barred by limitation.

15. In fine, the order and decretal order of the Execution Court are set aside thereby dismissing the Execution Petition and the Civil Revision Petition is allowed, but without costs.

Index: Yes
Internet: Yes
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To
1) The Registrar,
(X Assistant Judge),
City Civil Court,
Madras.

2) The Record Keeper,
V.R. Section,
High Court,
Madras.